

ESTTA Tracking number: **ESTTA763566**

Filing date: **08/10/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Conopco, Inc.		
Entity	Corporation	Citizenship	New York
Address	700 Sylvan Avenue Englewood Cliffs, NJ 07632 UNITED STATES		
Attorney information	Gregory P. Gulia Duane Morris LLP 1540 Broadway New York, NY 10036-4086 UNITED STATES gpgulia@duanemorris.com		

Applicant Information

Application No	85953982	Publication date	07/12/2016
Opposition Filing Date	08/10/2016	Opposition Period Ends	08/11/2016
Applicant	Grzebyk, David 8358 Lubec Street Downey, CA 90240 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Edible dog treats in the nature of frozen animal bones stored and sold from freezers

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	4396616	Application Date	04/20/2011
Registration Date	09/03/2013	Foreign Priority Date	NONE
Word Mark	SICLE		

Design Mark	SICLE
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2011/11/00 First Use In Commerce: 2011/11/00 Ice creams, frozen confections


U.S. Registration No.	2421400	Application Date	02/16/2000
Registration Date	01/16/2001	Foreign Priority Date	NONE
Word Mark	POPSICLE		
Design Mark	POPSICLE		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1923/00/00 First Use In Commerce: 1923/00/00 Frozen confections		

U.S. Registration No.	1840718	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	POPSICLE THE ORIGINAL BRAND		

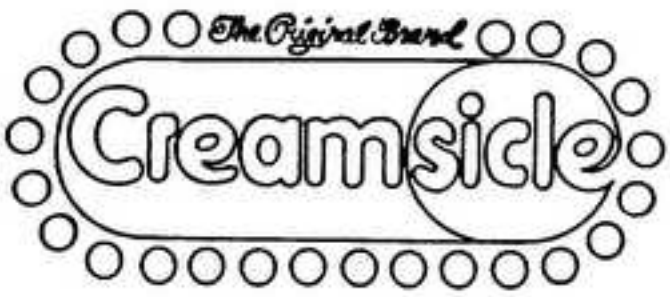
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

U.S. Registration No.	2668524	Application Date	09/26/2001
Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	POPSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 ice cream		

U.S. Registration No.	2651685	Application Date	09/26/2001
Registration Date	11/19/2002	Foreign Priority Date	NONE
Word Mark	THE ORIGINAL BRAND POPSICLE		


Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 ice cream		

U.S. Registration No.	1839541	Application Date	02/22/1993
Registration Date	06/14/1994	Foreign Priority Date	NONE
Word Mark	CREAMSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1937/01/15 First Use In Commerce: 1937/01/15 frozen confections		


U.S. Registration No.	1840719	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	CREAMSICLE THE ORIGINAL BRAND		
Design Mark			
Description of Mark	NONE		


Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		
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U.S. Registration No.	434594	Application Date	11/09/1946
Registration Date	11/25/1947	Foreign Priority Date	NONE
Word Mark	FUDGSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1946/10/04 First Use In Commerce: 1946/10/04 FROZEN CONFECTIONS[AND POWDERED CONCENTRATES FOR MAKING THE SAME]		

U.S. Registration No.	1840717	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	FUDGSICLE THE ORIGINAL BRAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

U.S. Registration No.	4150906	Application Date	09/23/2010
Registration Date	05/29/2012	Foreign Priority Date	NONE
Word Mark	YOSICLE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2012/02/15 First Use In Commerce: 2012/02/15 Ice cream, frozen confections, frozen yogurt

U.S. Registration No.	3178063	Application Date	11/09/2004
Registration Date	11/28/2006	Foreign Priority Date	NONE
Word Mark	CHOCSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/02/00 First Use In Commerce: 2005/02/00 frozen confections		

Attachments	85299678#TMSN.png(bytes) 75921375#TMSN.png(bytes) 74362545#TMSN.png(bytes) 76317760#TMSN.png(bytes) 76317761#TMSN.png(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gregory P. Gulia/
Name	Gregory P. Gulia
Date	08/10/2016

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 85/953,982

Mark: PUP CICLES

Published: July 12, 2016

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CONOPCO, INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.: _____
	:	
DAVID GRZEBYK,	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Opposer, Conopco, Inc., a corporation organized and existing under the laws of New York, having a place of business at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 (“Opposer”), believes that it will be damaged by registration of the designation PUP CICLES for “[e]dible dog treats in the nature of frozen animal bones stored and sold from freezers,” in International Class 31, as shown in Application Serial No. 85/953,982 (the “Application”), filed by David Grzebyk (“Applicant”). Opposer hereby opposes the Application under the provisions of Sections 2(d), 13 and 43(c) of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d), 1063 and 1125(c).

As grounds for opposition, Opposer, through its undersigned counsel, alleges as follows:

1. Opposer is the owner of all right, title and interest in and to the following trademarks and registrations therefor, among others, issued by the United States Patent and

Trademark Office for trademarks incorporating “SICLE” (hereinafter collectively referred to as the “SICLE Family of Marks”).

MARK	REGISTRATION NUMBER	REGISTRATION DATE	FIRST USE DATE	GOODS
SICLE	4,396,616	September 3, 2013	November 2011	ice creams, frozen confections
POPSICLE	2,421,400	January 16, 2001	1923	frozen confections
POPSICLE THE ORIGINAL BRAND (and Design)	1,840,718	June 21, 1994	January 1, 1988	frozen confections
POPSICLE	2,668,524	December 31, 2002	March 1, 2000	ice cream
POPSICLE THE ORIGINAL BRAND (and Design)	2,651,685	November 19, 2002	March 1, 2000	ice cream
CREAMSICLE	1,839,541	June 14, 1994	January 15, 1937	frozen confections
CREAMSICLE THE ORIGINAL BRAND (and Design)	1,840,719	June 21, 1994	January 1, 1988	frozen confections
FUDGSICLE	434,594	November 25, 1947	October 4, 1946	frozen confections
FUDGSICLE THE ORIGINAL BRAND (and Design)	1,840,717	June 21, 1994	January 1, 1988	frozen confections
YOSICLE	4,150,906	May 29, 2012	February 15, 2012	ice creams, frozen confections, frozen yogurt
CHOCSICLE	3,178,063	November 28, 2006	February 2005	frozen confections

2. The following registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and accordingly constitute conclusive evidence of the validity of the registered marks and the registrations therefor, of Opposer’s ownership of the

registered marks, and of Opposer's exclusive right to use the marks covered by the registrations in commerce in connection with the goods specified in the registrations: POPSICLE® (Reg. No. 2,421,400) for frozen confections; POPSICLE THE ORIGINAL BRAND (and Design)® (Reg. No. 1,840,718) for frozen confections, POPSICLE® (Reg. No. 2,668,524) for ice cream; and POPSICLE THE ORIGINAL BRAND (and Design)® (Reg. No. 2,651,685) for ice cream (hereinafter collectively, the "POPSICLE® Mark"); CREAMSICLE® (Reg. No. 1,839,541) for frozen confections; CREAMSICLE THE ORIGINAL BRAND (and Design)® (Reg. No. 1,840,719) for frozen confections; FUDGSICLE THE ORIGINAL BRAND (and Design)® (Reg. No. 1,840,717) for frozen confections and CHOCSICLE® (Reg. No. 3,178,063) for frozen confections.

3. Opposer's registrations for SICLE® (Reg. No. 4,396,616), YOSICLE® (Reg. No. 4,150,906) and FUDGSICLE® (Reg. No. 434,594) are valid and subsisting, in full force and effect, and constitute *prima facie* evidence of the validity of the registered marks and of Opposer's exclusive right to use the marks in commerce in connection with the goods specified in the registration.

4. Opposer and its predecessors-in-interest and their licensees have used one or more of the marks comprising the SICLE Family of Marks in commerce in connection with the nationwide production, distribution, sale and promotion of frozen confections and/or ice cream for more than ninety years.

5. Opposer is also the owner of federal trademark registrations for the FUDGSICLE® (Reg. No. 4,937,137) and CREAMSICLE® (Reg. No. 4,960,617) marks for a variety of other items, including candy, sweets, chocolate, chocolate confections and confectionery made of sugar.

6. Opposer and its predecessors-in-interest have, over the years, owned federal registrations for the trademarks FRUIT-SICLE, SUNDAE-SICLE, BI-SICLE, SPACE-SICLE, JET-SICLE, TRI-SICLE, SNO-SICLE, CONE-SICLE, JUICE-SICLE, NUTRI-SICLE, LOW-SICLE, MOM SICLE, SWEET SICLE, STAR-SICLE, PUDDING SICLE, CITRUS SICLE, BUBBLE-SICLE, GEL-SICLE, JELLY-SICLE and BUBBA-SICLE.

7. Opposer and its predecessors-in-interest and their licensees have used in commerce, and owned federal registrations for, one or more of the marks comprising the SICLE Family of Marks for items such as lollipops, body powder, toilet water, hand sewing patterns, sunglasses, toys, dolls, toy cars, toy trains, puzzles, board games, paper goods, footwear, lipstick, lip gloss and toilet soap.

8. Opposer's SICLE Family of Marks symbolize the extensive goodwill and consumer recognition that Opposer has acquired and established through its substantial marketing, advertising, promotion, distribution and sale of a wide range of products in connection with the SICLE Family of Marks.

9. Through its substantial expenditures of time, effort and other resources in connection with Opposer's continuous use and promotion of the SICLE Family of Marks, Opposer has established a public perception of the distinctive SICLE Family of Marks as an exclusive indicator of source for Opposer's goods.

10. As a result of the regular, extensive and well-publicized use of the SICLE Family of Marks, the SICLE Family of Marks are famous in the United States and are associated exclusively with Opposer and its high quality products.

11. Accordingly, the public is likely to associate any marks ending in SICLE as belonging to Opposer's SICLE Family of Marks and the public will believe that any such

products bearing such marks emanate from or are otherwise associated with Opposer and its products sold under the SICLE Family of Marks. Such confusion is particularly likely given that Applicant's PUP CICLES designation is intended to be used and will be used in connection with frozen edible products, like the products marketed by Opposer in connection with its SICLE Family of Marks.

12. On June 7, 2013, Applicant filed the Application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), to register the mark PUP CICLES in connection with "[e]dible dog treats in the nature of frozen animal bones stored and sold from freezers," in International Class 31.

13. Applicant's PUP CICLES Application was published for opposition in the *Official Gazette* on July 12, 2016. The deadline to oppose the Application is August 11, 2016. Opposer therefore timely files this Notice of Opposition.

14. Upon information and belief, Applicant has commenced use of the PUP CICLES trademark.

15. Opposer has acquired exclusive rights in the SICLE Family of Marks, individually and collectively, that substantially predate any rights upon which Applicant may rely.

16. Opposer's rights to the SICLE Family of Marks, and each of the individual marks comprising the SICLE Family of Marks, are superior to those of Applicant.

17. Opposer's SICLE Family of Marks, and each of the individual marks comprising the SICLE Family of Marks, are famous and were famous on and before the filing date of the Application or any use of the PUP CICLES designation by Applicant.

18. The “SICLE” portion of Applicant’s PUP CICLES designation is identical and/or confusingly similar to Opposer’s SICLE Family of Marks and the individual marks comprising the SICLE Family of Marks, including but not limited to the POPSICLE® Mark.

19. Applicant’s designation PUP CICLES is clearly intended to evoke Opposer’s SICLE Family of Marks, and more specifically, Opposer’s famous POPSICLE® Mark and to trade upon Opposer’s vast goodwill and equity.

20. Opposer believes that it will be damaged by registration of Applicant’s PUP CICLES designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because consumers familiar with Opposer’s famous SICLE Family of Marks and the individual marks comprising the SICLE Family of Marks are likely to mistakenly believe that Applicant and/or its products emanate from, are sponsored or authorized by and/or are otherwise associated or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

21. Opposer believes it will be damaged by registration of the PUP CICLES designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the PUP CICLES designation is likely to dilute the distinctive quality of Opposer’s famous SICLE Family of Marks and of the individual marks comprising the SICLE Family of Marks, including but not limited to Opposer’s famous POPSICLE® Mark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes that it will be damaged by registration of the designation PUP CICLES shown in Application Serial No. 85/953,982 and respectfully requests that the Application be refused registration.

Dated: August 10, 2016

I hereby certify that this correspondence is being filed by electronic transmission in the United States Patent and Trademark Office, Trademark Trial and Appeal Board on the date shown below.

/Inez P. Vega/
Inez P. Vega
Dated: August 10, 2016

Respectfully submitted,

By: /Gregory P. Gulia/

Gregory P. Gulia
Vanessa C. Hew
DUANE MORRIS LLP
1540 Broadway
New York, NY 10036-4086
Tel: (212) 692-1000
Fax: (212) 692-1020

Attorneys for Opposer,
Conopco, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 10, 2016, a true and correct copy of the foregoing Notice of Opposition was served, via prepaid first class mail, on David Grzebyk, at the address indicated below:

David Grzebyk
8358 Lubec Street
Downey CA 90240

A handwritten signature in cursive script, appearing to read "Inez P. Vega", is written over a horizontal line.

Inez P. Vega

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